

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed July 26, 2007 ("Office Action"). At the time of the final Office Action, Claims 1-33 were pending and rejected in the Application. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 102 Rejection

The Examiner rejects Claims 1, 9, 17, and 25 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,694,396 issued to Salmi (hereinafter "*Salmi*").

First, Applicant would like to point out that he understands the Examiner's current position. Second, while this prosecution has been somewhat tortured (flirting with the Appeal process on at least one previous occasion), Applicant acknowledges the Examiner's diligence and is grateful for receiving a Quality Office Action. Applicant has endeavored to match the Examiner's diligence and respond in kind, as Applicant is confident that there are features of the present invention that are distinguishable from *Salmi*. *Salmi* does indeed address "Message Classes" as the Examiner has identified. Specifically, *Salmi* explains:

"Thus, as one field the headers have the classification data of a message according to the invention in the field Message Class, which in a preferred embodiment can be i) Personal ii) Advertisement or iii) Informative and which thus tells that the message is either i) personal, i.e. either personal information originating from a server or a message originating from another terminal (subscriber connection), ii) an advertisement message typically containing commercial advertisement information or iii) an informative message containing information related to some subject, such as weather information, stock exchange information, news, etc."

But where *Salmi* falls short is in the identification of the message protocol: said more directly, the way in which *the actual message was communicated*.

"Out-of-band" communications [as the name implies] is data received outside of a normal channel (i.e. the in-band). The normal in-band channel is typically reserved for voice or data (most often e-mail). Simple telephony calls are not generally performed 'out-of-band.' So when *Salmi* is discussing "Personal" calls [above], it is still not discerning which are out-of-band signals. Similarly, conventional e-mail is not considered "out-of-band" so

when *Salmi* discusses “Advertisements” there is no distinguishing component that identifies whether the incoming information is ‘out-of-band.’ This becomes important in the context of Independent Claim 1, as only the ‘out-of-band’ signaling is being evaluated to determine if it includes pushed data. This out-of-band vs. in-band differentiation is not akin to evaluating Advertising Data vs. Personal Data, as either type of data could include both. In this way, distinguishing between “Message Classes” in *Salmi* is somewhat irrelevant to the teachings of the present invention.

In regards to ‘pushed data’, this information is typically [automatically] *pushed* to a given mobile, as the information becomes available from the server. This is why Independent Claim 1 calls out that the pushed data is “server initiated.” For example, if a stock price suddenly reaches some high point or hits some floor, an end user that signed up for some subscription could be notified through *out-of-band signaling* that included *pushed data*. These notifications are based on “predetermined criteria,” which is also outlined by Independent Claim 1. (See page 24-28 of Applicant’s Specification for support).

Finally, *Salmi* is flawed in that it also fails to discern whether that incoming data is appropriate for a session currently being hosted by the mobile unit. For example, if a user were talking to his stockbroker, then pushed data associated with stock prices would be ‘appropriate’ to post to the session concurrently. [This optional-posting feature is also outlined by Independent Claim 1.] But such would not be the case of an innocuous weather report, which would not be relevant to such a financial conversation. Similarly, pushed data concerning a weather forecast while an end user was traveling may be pertinent at that time, but stock prices would not be relevant while the end user is sending e-mail to a family member. Independent Claim 1 goes even further to explain how only appropriate data would be posted to the session currently being hosted by the mobile session. So this decision to post, because it is based on the current session being hosted, is done in real-time. Logically, this only makes sense because the decision to post is based on a current parameter: namely, the current session being hosted. Once again *Salmi* falls short in providing these teachings.

For at least these reasons, Independent Claim 1 is clearly allowable over *Salmi*. In addition, the other Independent Claims (and their respective dependents) should be allowed for similar or analogous reasons. Notice to this effect is respectfully requested.

Section 103 Rejections

The Examiner rejects Claims 2-4, 6, 7, 10-12, 14, 15, 18-20, 22, 23, 26-28, 30, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Salmi* in view of U.S. Patent No. 6,119,014 issued to Alperovich et al. (hereinafter "*Alperovich*"). The Examiner rejects Claims 5, 13, 21, 29, and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Salmi* in view of *Alperovich* applied to Claims 4, 12, 20, 28 and 25, and further in view of what is well known in the art. The Examiner rejects Claims 8, 16, 24, and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Salmi* in view of U.S. Patent Publication No. 2001/0041571A1 issued to Yuan (hereinafter "*Yuan*"). These rejections are moot based on the §102 analysis provided above.

Thus, all of the pending claims have been shown to be allowable, as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these pending claims.

ATTORNEY DOCKET NO.  
062891.0508  
Confirmation No.: 8274

PATENT APPLICATION  
10/004,320

14

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214.953.6675.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorneys for Applicant

  
Thomas J. Frame  
Reg. No. 47,232

Date: January 3, 2008

Customer No. **05073**